California Acquisitions Manual

PROCEDURE

LOAN OF SUPPLIER EQUIPMENT AND BAILMENT AGREEMENTS

CAM 3.2.6 **DATE: 5/1/99**

A. PURPOSE:

Describes the requirements for supplier-owned property that is temporarily loaned/bailed to the State for test, study or demonstration, and to enable its timely return or purchase. Such property is not to be considered "State Property" for purposes of the requirements of the State Administrative Manual pertaining to the recording and disposal of "State Property."

B. DEFINITIONS:

See Glossary Section for definitions. Any definitions included here are for purposes of this procedure only.

1. **BAILED PROPERTY**: Supplier-owned goods temporarily in the physical possession of the State for a period of time exceeding 30 days, at no charge to the State.

2. **BAILMENT CONTRACT**: A contract (e.g., Purchase Order, Agreement, Letter Contract or Memorandum of Understanding) issued for no charge to a supplier. The contract protects the interests of both parties and establishes the conditions under which the bailed property is loaned to the State, how and when the bailed property will be returned to the State, which party bears the risk of loss or damage to the bailed property and under what conditions the State may choose to purchase the bailed property.

3. **LOANED PROPERTY**: Supplier-owned goods temporarily in the physical possession of the state for a period of time that is more than one day but that does not exceed 30 days, at no charge to the State.

4. **SUPERSEDING CONTRACT**: A contract used to purchase supplier equipment that was loaned/bailed to the State.

C. PROCEDURE:

1. The State shall not accept the loan or bailment of any supplier goods for more than one day without a written contract prepared in advance of the receipt of the supplier goods. The contract must identify all of the supplier goods in the custody of the State and their fair market value in the event that any item is lost, damaged or destroyed, or if the State chooses to purchase it.

2. Generally, property that is loaned or bailed to the State is done so **at no charge** by the supplier. If charges apply, the responsible buyer must obtain approval from management for the charges and document the purpose for the charges in the contract file. The buyer shall also analyze the charges to determine that they are fair and reasonable in accordance with CAM 3.5.5, Price/Cost Analysis, and document the contract file in accordance with CAM 3.6.1, Contract File Documentation. Even though the contract may show no charge, documentation and approvals shall be obtained based on the fair market value of the property in the State's possession.

3. Each agency shall identify the appropriate purchasing/contracting organization(s) that will maintain files of loaned/bailed property. Different organizations may be responsible depending on the nature of the work that the supplier property supports (e.g., a personal or consulting service, the purchase of goods/commodities or information technology goods and services; or facility operation or construction work, etc.).

4. Loaned property that is retained by the State for no more than **one working day** does not require any documentation or contract so long as it is returned to the supplier at the end of the day and has suffered no damage. See the paragraph below for how to proceed if the loaned property is lost, damaged or destroyed.

5. Requests for **loaned property** for a period not to exceed 60 days may be done by a Memorandum of Understanding (MOU) or Letter Contract (LC) containing the language shown in Appendix 1. As an alternative to the use of an MOU or LC, agencies may use other contract documents, including any document required to be used by an agency's automated purchasing system. If not entered into an automated purchasing system, loaned property must be tracked using a manual logging system. Electronic spread-sheets work well for this.

6. **Bailed property** requires a properly authorized Bailment Contract (Purchase Order or Agreement). The contract shall contain the language set forth in Appendix 1. Where an agency utilizes an automated purchasing system, the contract shall be entered into the system in recognition of the time by which the goods must be returned to the supplier and the potential liability to the State. At the conclusion of the contract term, if the item is returned to the supplier without damage, the contract is closed out.

7. Organizations requiring immediate delivery of loaned property for **critical or emergency situations** must prepare a justification memorandum signed by the head of the agency. The memo shall be addressed to the appropriate purchasing/contracting organization and shall explain the emergency circumstances and include a copy of the loaned property agreement that was executed with the supplier.

8. In the event that an item of loaned property is to be retained by the State for longer than 60 days, the State organization in possession of the supplier equipment shall prepare a request to convert the loaned property to bailed property and provide it to the applicable purchasing/contracting organization at least 5 working days prior to the expiration of the loaned property contract. The purchasing/contracting organization shall enter into negotiations with the supplier for the extension of the retention period and any applicable charges.

9. Changes in Bailment Contracts are processed on the appropriate contract change document (e.g., a Std. 215, Contract/Agreement, a Purchase Order Change, etc.). Extension of the bailment period must be requested and authorized in writing in advance of the expiration date on the Bailment Contract. Approval of the extension is required by the manager of the using agency.

10. Instead of a traditional delivery date on a contract that specifies the date that the supplier is to furnish the contract goods to the State, the date specified in a contract for loaned/bailed property is the date the property is to be **returned** to the supplier. Buyers will track loaned/bailed property through manual logs or automated systems and advise requesters to return supplier property in a timely manner.

    a. All State personnel shall make every effort to ensure that supplier property is not retained past the contract date for its return.

b. Retention of supplier property by the State past the time for its return constitutes a breach of contract and might be grounds for the supplier to claim that the State converted the property to its use and therefore the State becomes liable for payment of the fair market value of the property. Further, for extreme delays in return, the State could be liable for penalties for late payment.

c. Retention of supplier property past its return date by State personnel without payment or processing of the appropriate superseding contract may be grounds for disciplinary action up to and including termination.

11. Supplier loaned/bailed property may be delivered to the requester without being processed as "received" in any purchasing system. However, the responsible buyer shall be notified when the supplier equipment is in the custody of the State and the buyer shall include the notification in the contract file. If the supplier property is used for evaluation purposes and it is anticipated that it will be purchased, the requesting organization (or with the assistance of the Procurement Division Engineering Staff) must inspect the equipment and prepare a written report that it performs as required and furnish the report to the buyer along with the request to purchase the goods.

12. When the loaned/bailed equipment is returned to the supplier, the buyer shall document that fact in the contract file (and in any automated purchasing system, the item shall be deemed "received" and the contract closed in accordance with established procedures). The buyer or user shall promptly approve and process any invoices for charges authorized by the contract.

13. A decision to purchase an item which has been loaned/bailed to the State requires that a bailment contract be amended or it must be closed and a new superseding contract prepared. For loaned property, a new superseding contract is required. For both loaned/bailed property, the superseding contract must reference the bailment contract or loaned property agreement. If competition was not the basis on which the loaned/bailed property was obtained for study or evaluation, then the superseding contract shall be considered a sole source procurement in accordance with CAM 3.4.1, Competition vs. Sole Source and all appropriate documentation and approvals shall be obtained.

14. Generally, the supplier retains title to all loaned/bailed property while in the custody of the State and the State assumes all risk of loss or damage to supplier-owned property while in the State's custody. However, the contract can include negotiated provisions that modify the responsibilities of the parties for loss or damage under various specified conditions. It is not recommended that changes be made to the recommended contract language in Attachment 1 that alter the responsibilities of the parties unless the equipment while in State possession is being used by supplier personnel during study or evaluation or by some third party who has contracted to work with the equipment and be responsible for loss or damage. Buyers may consult with the Procurement Division or legal counsel for assistance in modifying Attachment 1. For any special insurance requirements for valuable equipment, consult with the Department of General Services, Office of Risk and Insurance Management (ORIM).

15. If the loaned/bailed property has been lost or damaged while in the custody of the State, the organization with custody of the loaned/bailed property shall promptly advise the responsible buyer. The buyer will examine the contract to determine the circumstances under which the State agreed to be responsible for loss or damage and make a written determination with management concurrence of whether representatives of the State are at fault. The buyer will negotiate with the supplier in good faith to determine if there will be a charge for the lost or damaged goods and if so, determine a fair value of

compensation for it. The buyer will initiate a contract document, if none was done previously, or amend any existing contract, to permit payment for the lost or damaged property. The buyer shall document the file to explain the circumstances under which the property was lost or damaged and include a written analysis that the value to be paid the supplier is fair and reasonable in accordance with CAM 3.5.5, Price/Cost Analysis. In the event that the loss or damage was determined to be caused by non-State employees or by employees who were acting outside the scope of their employment (e.g., engaging in criminal acts, etc.) the buyer shall seek the advice of legal counsel to determine how to proceed and whether any recommendation of disciplinary action is required.

16. Loaned/bailed property may be subject to use tax while in the State's possession. Each agency must establish procedures to maintain accurate inventories of all supplier loaned/bailed property in its possession for more than one day. The inventory must show the value of the loaned/bailed equipment for tax purposes. Reports must be furnished to the appropriate agency accounting or fiscal units, as required.

D. RESPONSIBILITIES:

1. Organizations requesting supplier loaned/bailed property shall coordinate with the responsible buyer function to ensure proper documentation and contract documents are in place to establish the rights and liabilities of the parties in a timely manner.

2. Buyers shall establish appropriate contracts and change contracts to reflect the status of loaned/bailed property. Buyers shall coordinate with requesting organizations to ensure the timely return of such property to the supplier, or support the decision to purchase such property in accordance with all required laws, regulations, policies, procedures and sound business judgment. In the event that loaned/bailed property is lost or damaged, buyers shall negotiate with suppliers in good faith, consult with other experts to determine responsibility for the loss or damage and consequences, and prepare such contract documents and supporting documents as are necessary to clearly explain the facts, events and decisions regarding the initial receipt of the property to its final disposition.

3. Management shall ensure that all affected agency personnel understand the requirements with regard to obtaining, using, and returning loaned/bailed property, including the State's liability for loaned/bailed property in the case of improper retention, loss or damage. Management shall take appropriate disciplinary action for failure to follow established procedures to properly protect the supplier's interest in its property.

E. APPENDICES:

1. Appendix 1: Loaned/Bailed Property in the Possession of the State

F. AUTHORITY AND REFERENCES:

1. Statutory: N/A
2. Regulatory: N/A
3. PD Procedural: CAM 3.4.1, Competition vs. Sole Source
   CAM 3.5.5, Price/Cost Analysis
   CAM 3.6.1, Contract File Documentation

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